Indiana Department of Education   Division of Exceptional Learners

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 1892.02
COMPLAINT INVESTIGATOR: Brian Simkins
DATE OF COMPLAINT: March 18, 2002
DATE OF REPORT: June 14, 2002
REQUEST FOR RECONSIDERATION: no
DATE OF CLOSURE: September 6, 2002

COMPLAINT ISSUES:

Whether the Gary Community School Corporation violated:

511 IAC 7-27-5(d) by changing student A's placement and the placement of other similarly situated students without parental consent.

511 IAC 7-27-4(c) by unilaterally changing student A's placement and the placement of other similarly situated students and failing to convene case conference committees to determine the need for any of the changes of placement.

511 IAC 7-27-6(d) by continuing to implement individualized education program (IEP) for student A and other students that are more than twelve months old.

511 IAC 7-27-7(a) by failing to implement student A's IEP as written.

During the course of the investigation, an additional issue was identified:

511 IAC 7-25-6(a) by failing to conduct reevaluations every thirty-six calendar months for students receiving special education and related services.

An extension of time until May 17, 2002, was granted on April 16, 2002, to allow the investigator sufficient time to review the information related to the complex and systemic issues involved. Another extension of time until June 14, 2002, was granted May 17, 2002, due to the need for more time to develop a corrective action that will best lead to a resolution of the systemic issues involved.

FINDINGS OF FACT:

1.   Student A is seventeen years old and attends a local senior high school (the "School"). Student A is eligible for special education and related services as a student with a mild mental disability.

2.   There are a number of other students ("Students") in grades 9-12 who attend the School and receive special education services. The Students are eligible for special education as students with either MiMH or an emotional disability ("ED"). The educational records of fifty-one students (including Student A) were reviewed during an on-site visit to the School's special education district office on April 9, 2002. Thirty-seven of the records reviewed were of students with MiMH and fourteen records were of students with ED.

3.   Student A has an IEP, dated March 28, 2002. The IEP prior to this one is dated November 19, 1999.
        Student A went nearly two years without the benefit of a current IEP.

4.   Educational records of the other 50 students revealed that many Students transitioning from the middle
        schools to the School did not have a current IEP. The review of the educational records showed that
        43 out of 50 students had continued to receive special education services based on an IEP that was
        more than twelve months old. Of these 43 students, 18 did not have a current IEP as of April 9, 2002.

5.   Student A's IEP, dated November 19, 1999, indicates that Student A is to receive special education
        instruction for most of the instructional day, with instruction in the general education classroom part of
        the day. Student A's schedules from 9th and 10th grade show that Student A was being primarily
        instructed in special education classrooms. A couple of changes were made when Student A reached
        11th grade. Student A's schedule shows that Student A was placed in general education United States
        History, physical science, and English 11 classes. Also, Student A was placed in a custodial
        maintenance program that takes place at a local career center during Student A's afternoons as part of
        the School's general vocational education program. These placements were made unilaterally by the
        School without benefit of a case conference committee ("CCC") decision, an updated IEP, or parental
        consent. A CCC was convened on February 12, 2002, to discuss Student A's IEP. The IEP was finally
        revised on March 28, 2002, and Student A's placement better reflects Student A's schedule. Student
        A's guardian did not sign the revised IEP until April 4, 2002.

6.   Of the Student's whose educational records were reviewed and whose IEPs are current, 14 of the 26
        IEPs are deficient in one or more of the following areas: (1) the goal page(s) does not match the
        student's schedule; (2) the goal page(s) does not match the least restrictive environment ("LRE")
        placement page; (3) the LRE placement page does not match the student's schedule; and/or (4) the
        IEP is incomplete. In addition, nine of these IEPs indicate that the student is to have most of his/her
        instruction in a special education classroom, with general education classes part of the day; however,
        these students were placed a majority of the time in general education classes. Two of the IEPs
        required the students to be placed entirely in general education classes, but these students are
        attending special education classes at least part of the time.

7.   Twenty-six of the 50 students whose educational records were reviewed have gone more than thirty-six
        months without having a special education reevaluation.

CONCLUSIONS:

1.   Finding of Fact #5 indicates that the School unilaterally changed Student A's placement from special
        education instruction most of the day to general education most of the day in addition to a vocational
        education class. This change was initiated by the School without a CCC decision, an updated IEP, or
        parental consent. Therefore, violations of 511 IAC 7-27-5(d), and 511 IAC 7-27-4(c) are found with
        respect to the School's unilateral action in changing Student A's placement without benefit of a CCC
        decision or parental consent. A further violation of 511 IAC 7-27-2(a) is found for the School's failure to
        implement Student A's IEP, dated November 19, 1999, as written.

2.   Finding of Fact #2 and #6 demonstrate that the School unilaterally changed the placement of at least
        fourteen other Students without benefit of a CCC decision or parental consent. The School has placed
        students in a general education classroom for majority of the day when the Students' IEPs state that
        they are to receive the majority of instructional services in a special education classroom, as well as
        placed other Students in special education settings when the IEPs state the students will receive all of

their educational services in the general education classroom. Therefore, violations of 511 IAC 7-27-5(d), 511 IAC 7-27-4(c), and 511 IAC 7-27-7(a) are found with regard to these Students.

3.   Finding of Fact #3 shows that Student A went nearly two years without the benefit of a current IEP, from November 19, 1999 to March 28, 2002. Therefore, a violation of 511 IAC 7-27-6(d) is found.

4.   Finding of Fact #4 indicates that the School continued to implement IEPs for other students that are more than twelve months old. Forty-three of 50 students whose educational records were reviewed had continued to receive special education services based on IEPs more than twelve months old. As of April 9, 2002, the School continued to utilize IEPs for Students that are more than 12 months old. Therefore, a violation of 511 IAC 7-27-6(d) is found with regard to these Students.

5.   Finding of Fact #7 shows that the review of educational records show that 26 out of the 50 students reviewed have gone more than thirty-six months without having a special education reevaluation conducted. Therefore, a violation of 511 IAC 7-25-6(a) regarding other similarly situated students is found.

The Department of Education, Division of Exceptional Learners requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

Gary Community Schools shall:

1.   Convene a CCC, prior to the beginning of the 2002-2003 school year to review and revise Student A's IEP. The CCC shall:
    a. develop a statement of needed transition services to describe the Student's participation in vocational education;
    b. specify the Student's present level of educational performance;
    c. write new annual goals including short-term objectives;
    d. specify what the Student's placement will be in the least restrictive environment and ensure that the Student's schedule matches the placement;
    e. clearly describe when special education services will start and stop, as well as length, frequency, and location of services; and
    f. specify how the Student's progress will be measured and how the parent/guardian will be notified of the progress.
    The CCC must also consider the need for compensatory services resulting from the School's failure maintain a current IEP, unilateral change of placement, and failure to implement the Student's IEP as written. The CCC Report must clearly document the CCC's consideration of the need for compensatory services and must clearly describe the services to be provided. The School must ensure that the IEP is an "agreed-upon IEP" with consent from the parent/guardian. A copy of the CCC Report, the revised IEP (signed by the parent), and a copy of the Student's schedule shall be sent to the Division no later than September 6, 2002.

2.   Send a written reminder to building administrators and other relevant special education personnel regarding:
    a. A student's placement may not be changed without first convening the CCC and obtaining written parental consent; and
    b. A student's IEP is to be implemented as written.

A copy of the written memorandum and an assurance statement that the memorandum was sent to building administrators and special education personnel shall be submitted to the Division no later than September 6, 2002.

3.   Shall cooperate with the Division in its ongoing investigation of the systemic non-compliance with the requirement of Article 7. Such cooperation may require, but is not limited to, providing the Division with access to the educational records of all students with disabilities, as well as access to corporation personnel to obtain additional information. Corrective action for this ongoing and systemic non-compliance will be determined subsequent to the Division's completion of the investigation and monitoring. Gary Community Schools will be expected to comply with all identified corrective action in order to remain eligible for federal special education funds.